



February 19, 1999

Ms. E. Cary Grace
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR99-0498

Dear Ms. Grace:

You have asked whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 123485.

The City of Houston (the "city") received a request for information concerning an almost 20-year-old murder case. The requestor, who identifies himself as the child of the murder victim, states:

What I am hoping to accomplish, is to ultimately determine whether or not my mothers [sic] murderer(s) was ever apprehended or not. And also, I should like to acquire any and all information pertinent to this case.

You assert that the information concerning this case should be withheld from disclosure to the requestor on the basis of section 552.108(a)(1) and (a)(2) of the Government Code. Section 552.108(a)(1) provides an exception from disclosure for information that is held by a law enforcement agency or prosecutor and that deals with the detection, investigation, or prosecution of crime, when release of such information would interfere with the detection, investigation, or prosecution of crime. A law enforcement agency or prosecutor can show the applicability of section 552.108(a)(1) by showing there is an ongoing investigation or pending prosecution of a case. Open Records Decision No. 216 at 3 (1978) (release of information during pending criminal case would interfere with prosecution of crime and law enforcement interests). You state that no one has ever been charged with the murder and that the police department still considers the case "open." However, you do not argue that there is a live or ongoing investigation in this case.

You also assert that section 552.108(a)(2) protects this information from disclosure. In 1997, section 552.108 was amended. See Act of June 1, 1997, H.B. 951, § 1, 75th Leg., R.S.

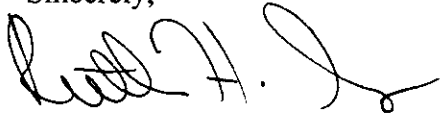
Amended section 552.108(a)(2) provides an exception to disclosure for "information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication." Thus, investigation information held by a law enforcement agency or prosecutor concerning an investigation which has concluded, but the conclusion is a result *other* than conviction or deferred adjudication, may be indefinitely withheld from disclosure to the public. You indicate that no charges have ever been filed in this case and that section 552.108(a)(2) is applicable.

We note that section 552.108 is a discretionary exception which may be waived by the governmental body, so that any information not otherwise made confidential may be released if the city chooses. Gov't Code § 552.007. However, as the city has asserted section 552.108 and shown the applicability of that exception, most of the information at issue must be withheld from disclosure. Some of the information, however, is public and must be released. Section 552.108(c) provides that basic offense report information is not protected from disclosure under section 552.108. Basic information is the type of information that is generally included on the front page of an offense report, including a detailed description of the incident. *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177, 186-87 (Tex. Civ. App.--Houston [15th Dist.] 1975), *writ ref'd n.r.e. per curiam*, S.W.2d 559 (Tex. 1976); Open Records Decision No. 127 (1976). For your convenience, we have enclosed a summary of the categories of information which are generally considered to be front page information that is public.

To the extent any of the submitted documents have been filed with a court, they are public. See *Star-Telegram, Inc. v. Walker*, 834 S.W. 2d 54, 57-58 (Tex. 1992). Also, autopsy reports are expressly made public by section 11 of article 49.25 of the Code of Criminal Procedure. The remaining information may be withheld from disclosure under section 552.108.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read "Ruth H. Soucy", written in a cursive style.

Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Ref.: ID# 123485

Encl. Submitted documents, summary of Open Records Decision No. 127 (1976)

cc: Mr. Jeffery Jay Roester
2303 Woodrow Court, #2
Appleton, Wisconsin 54915-1629
(w/o enclosures; w/summary of Open Records Decision No. 127 (1976))